

Mahamad Muse Vs Bagas Amanji Umar

Court: Bombay High Court

Date of Decision: July 6, 1908

Citation: (1908) 10 BOMLR 742

Hon'ble Judges: Chaulbal, J; Batchelor, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Batchelor, J.

Although in general the decision of a Court upon one document is not conclusive as to the character of another document, yet

the instrument with which we are here concerned, namely Ex. 25, bears such close and intimate resemblance to the deed which was construed in

the Full Bench decision of this Court in Tukaram v. Ramchand I L R (1901) 26 Bom. 252 : 3 Bom. L.R. 778, that in our opinion we are bound to

follow that decision. No substantial difference that we can discover exists between the two documents. Here, as there, the relation of debtor and

creditor was established prior to the execution of the deed. Here, as there, the creditor is to appropriate the income of the land towards the

liquidation of the pre-existing debt; and when the creditor has managed the land for the prescribed period and appropriated the produce, the

debtor will understand that his debt has been paid off, and that he is free to resume possession of the land. There is no mention of any premium or

periodical payment of rent or share of the produce. Moreover, reading the deed as a whole, we are of opinion that the parties clearly intended that

the relation between them should be that of mortgagor and mortgagee. The deed is described as a "Valatdan Patta," and though the word "Patta

is no doubt equivalent to the English "Lease", yet the word "Valatdan" is rendered "a kind of mortgage" in Robertson's Glossary. The other

considerations to which the Pull Bench called attention apply here as forcibly as they applied in that case, for this also is a suit under the Dekkhan

Agriculturists' Relief Act.

2. Following, therefore, the decision of the Full Bench we come to the conclusion that this Ex. 25 is a mortgage deed. No other point has been

taken and we, therefore, confirm the decree under appeal and dismiss this appeal with costs.